ALJ/XJV/sbf PROPOSED DECISION

Agenda ID# 12473 Adjudicatory

### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into Operations and Practices of Pacific Gas & Electric Company regarding Anti-Smart Meter Consumer Groups.

Investigation12-04-010 (Filed April 19, 2012)

# DECISION AWARDING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 13-04-012

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 13-04-012			
Claimed (\$): 26,817.01	Awarded (\$): 26,817.01			
Assigned Commissioner: Michel Peter Florio	Assigned Administrative Law Judge (ALJ): Jean Vieth			

#### PART I: PROCEDURAL ISSUES

**A. Brief Description of Decision:** D.13-04-012 approves a three-party settlement of this

investigation into the activities of a Pacific Gas and Electric Company (PG&E) employee William Devereaux to infiltrate, by using a false name, online discussion groups hosted by several anti-smart meter activist

organizations.

# B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	<b>CPUC Verified</b>				
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):						
1. Date of Prehearing Conference (PHC):	May 25,2012	Yes				
2. Other Specified Date for NOI:						
3. Date NOI Filed:	July 25, 2012	Yes				
4. Was the NOI timely filed? Yes						
Showing of customer or customer-related status (§ 1802(b)):						

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5. Based on ALJ ruling issued in proceeding number:	Application (A.) .09-09-013 (verified in D.10-05-012)	Yes
6. Date of ALJ ruling:	Jan. 7, 2010 (verified in D.10-05-012)	Yes
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or custome	Yes	
Showing of "significant finance	:	
9. Based on ALJ ruling issued in proceeding number:	Rulemaking (R.)11-11-008	Yes
10. Date of ALJ ruling:	April 19, 2012	Yes
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial l	hardship?	Yes
Timely request for comp	pensation (§ 1804(c)):	
13. Identify Final Decision:	D.13-04-012	Yes
14. Date of Issuance of Final Order or Decision:	April 5, 2013	Yes
15. File date of compensation request:	May 29, 2013	Yes
16. Was the request for compensation timely?	Yes	

### PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of its contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
1. Whether The Commission Should Grant PG&E's Motion For A Protective Order.		
Early in the proceeding, PG&E filed a motion for a protective order seeking to redact from the Consumer Protection and Safety Division's (CPSD) Staff Report, among other things, the names and titles of certain PG&E employees and 3rd parties and a PG&E investigation report that was	TURN Response to Motion of PG&E for	

appended to the Staff Report.	Protective Order (refiled per ALJ order	Vac
	6/26/12).	Yes
TURN filed a response and participated in a Law & Motion Hearing on this matter.	Transcript of Law & Motion Hearing	
TURN argued that privacy rights of PG&E	(7/13/12).	
employees must be balanced against the	(//13/12).	
public right of access to information that		
impacts the public. TURN further argued		
that whatever privacy concerns PG&E had		
re their employees and senior managers		
were outweighed by the need for the		
Commission and the public to have a clear		
and transparent record of what transpired,		
the role of senior management in possibly		
condoning Mr. Devereaux's spying, and		
what steps PG&E senior management		
would take to ensure no similar activities		
happen in the future. TURN also		
submitted to the ALJ results of research that indicated that a simple Google search		
easily found references to almost all the		
PG&E employee names and titles that	Transprint of DUC at 45 50 (6/25/12)	Yes
PG&E wanted redacted.	Transcript of PHC, at $45 - 50$ (6/25/12).	1 65
Further, TURN objected to labeling as		
confidential "personnel files" parts of the PG&E internal investigation report. To		
support its argument on this issue, TURN		
cited and discussed at the PHC a recent		
decision, Marken v. Santa Monica-Malibu		
Unified School District, 202 Cal.App.4 <sup>th</sup>		Yes
1250 (Jan. 2012).	Joint Ruling of Assigned Commissioner and ALJ on Public Release of Staff Report and	168
The Commission agreed with TUDN on	Related Motions, at 9 and 10-12 (7/31/12).	
The Commission agreed with TURN on most points redacting very little in the	Related Motions, at 7 and 10-12 (7/31/12).	
investigative reports. The Commission did		
agree to redact the names but not titles of		
PG&E employees for "safety" reasons. The		
Commission ruling also agreed with		
TURN's advocacy on the personnel records		
issue specifically relying on the Marken		
case that TURN had raised and discussed.		

2. Whether PG&E Management Was Aware Of Mr. Devereaux's Activities  This was one of the major issues identified in the Order Instituting Investigation (OII). The determination of this issue was a critical element in TURN's assessment and whether TURN would participate in a settlement. After engaging in discovery with PG&E, reviewing the documents produced as a result of that discovery, and analyzing the CPSD report, TURN concluded that there was insufficient evidence to demonstrate that PG&E's management was aware of Mr. Devereaux's actions prior to those activities being reported in the press.  However, TURN was concerned that PG&E has a culture that is hostile to views that disagree with PG&E. TURN was insistent in settlement discussions that this concern be addressed as part of the final settlement.	Approved Settlement Agreement, attachment A to D.13-04-012, paras. 1.12 and 1.16.	Yes
3. Whether Fines And/Or Remedial Actions Should Be Imposed On PG&E  This was also an issue identified in the OII. Although there was insufficient evidence, in TURN's view, to find that PG&E management was aware of Mr. Devereaux's activities, TURN was concerned that PG&E do everything in its power to ensure that no similar actions take place in the future. Thus, TURN argued for a fine and certain remedial actions. These were reflected in the final settlement agreement.	Approved Settlement Agreement, attachment A to D.13-04-012, paras. 2.2 and 2.3 – <i>i.e.</i> PG&E to pay a fine of \$390,000; PG&E to sponsor three trainings on appropriate social media use and proper online protocols to industry groups; PG&E to continue to improve internal employee education efforts re proper use of social media; and PG&E would file a compliance report after completing the three external trainings.	Yes

### B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	No	Yes
b. Were there other parties to the proceeding with positions similar to the claimants?	Yes	Yes
c. Name of other parties (of applicable): CPSD, EMF Safety Network, Hart, and the Ecological options Network.	CARE/Joshua	Yes
d. Claimant description of how claimant coordinated with DRA and ot avoid duplication or how claimant participation supplemented, com contributed to that of another party:	_	
Unlike CPSD, TURN represented the perspective of an entity that could be vedeceptive activities of the type committed by Mr. Devereaux. In this respect direct and concrete interest in this case different from that of CPSD.		Yes
CPSD and TURN worked very closely together in this proceeding to avoid deffort, with TURN advocating certain points and CPSD others. For example advantage of CPSD's discovery and only sought to supplement what CPSD TURN also took an active role regarding the protective order issue while CP this issue. Through this collaboration we were able to independently reach that the adopted settlement with PG&E was in the public interest. TURN distant data with the other parties but our perspectives were so far apart that the opposed the settlement. TURN should be found to have avoided duplication possible.	Yes	

### PART III: REASONABLENESS OF REQUESTED COMPENSATION

### A. General Claim of Reasonableness (§§ 1801 & 1806):

a. Explanation as to how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation:	CPUC VERIFIED
rodocidado rodationomp with sonomo rodiizod tinodgii participation.	Yes
Given the lack of evidence to find that PG&E management colluded with	
Mr. Devereaux in his activities against the EMF groups, TURN submits	
that a settlement was a reasonable resolution to this investigation. The	
settlement avoided a long, protracted proceeding and minimized the costs	
and risks associated with this further litigation. The settlement terms not	
only resulted in a fine but, as important, ensured that PG&E would do	
everything necessary to guard against similar actions occurring in the	
future.	

b. Reasonableness of Hours Claimed.	
Mr. Nusbaum was the lead attorney for this proceeding for TURN responsible for general management of TURN's efforts and lead negotiator for TURN in the settlement discussions. Mr. Long provided advice and guidance in his role as TURN's Legal Director. Mr. Long also focused on the Protective Order and related procedural issues when Mr. Nusbaum was unavailable in the early part of the case. Overall, the total hours included in this request represent slightly less than one and one-half weeks of attorney time. The Commission should find TURN's request for intervenor compensation reasonable.	Yes
c. Allocation of Hours by Issue	
TURN has allocated all of our attorney and advocate time by issue area or activity, as evident on our attached timesheets.	Yes
The following codes relate to specific substantive issue and activity areas addressed by TURN:	
GP - General Preparation: time for activities necessary to participate in the Docket	V
PO – Work related to the PG&E Protective Order	Yes
Settlement – Activities associated with settlement	
COMP - Preparation of compensation request and TURN's notice of intent	

# B. Specific Claim:\*

	CLAIMED							WARD
	ATTORNEY, EXPERT, AND ADVOCATE FEES							
Item	Year	Hours	Total \$	Hours	Rate	Total \$		
William Nusbaum	2012	33.75	\$445	D.13-03-024 (March 28, 2013)	15,018.75	33.75	\$445	15,018.75
William Nusbaum	2013	3.75	\$455	Resolution ALJ-287	1,706.25	3.75	\$455	1,706.25
Tom Long	2012	16.50	\$530	D.13-05-007	8,745.00	16.50	\$530	8,745.00
			•	Subtotal:	\$25,470.00		Subtotal:	\$25,470.00

	INTERVENOR COMPENSATION CLAIM PREPARATION **									
	Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$	
	Villiam 2012 1.5 \$222.50 Half approved hourly rate			333.75	1.5	\$222.50	\$333.75			
	liam sbaum	2013	4	\$227.50	Half approved hourly rate	910.00	4	\$227.50	\$910.00	
					Subtotal:	\$1,243.75		Subtotal:	\$1,243.75	
					COSTS					
#	Item		Detail			Amount	Amou	nt		
	Photocop	ies				6.00			\$6.00	
	Lexis				90.66			\$90.66		
	Postage					6.60			\$6.60	
	Subtotal:					\$103.26		Subtotal:	\$103.26	
			TO	\$26,817.01	TOTAL	AWARD:	\$26,817.01			

<sup>\*</sup>We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

\*\*Travel and Reasonable Claim preparation time typically compensated at  $\frac{1}{2}$  of preparer's normal hourly rate

Attorney	Date Admitted to CA BAR <sup>1</sup>	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
William Nusbaum	June 7, 1983	108835	No; Please note that from January 1, 1997 until October 4, 2002 Mr. Nusbaum was an inactive member of the California Bar.
Thomas Long	December 11, 1986	124776	No.

<sup>&</sup>lt;sup>1</sup> This information may be obtained at: http://www.calbar.ca.gov/.

#### PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	Yes

#### **FINDINGS OF FACT**

- 1. TURN has made a substantial contribution to D.13-04-012.
- 2. The requested hourly rates for TURN's representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
- 3. The claimed costs and expenses are reasonable and commensurate with the work performed.
- 4. The total of reasonable contribution is \$26,817.01.

### **CONCLUSION OF LAW**

1. The Claim satisfies all requirements of Public Utilities Code §§ 1801-1812.

#### **ORDER**

- 1. The Utility Reform Network is awarded \$26,817.01.
- 2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Claimant the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 12, 2013, the 75<sup>th</sup> day after the filing of The Utility Reform Network's request, and continuing until full payment is made.
- 3. The comment period for today's decision is waived.

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Dated	, at San Francisco, California		

This decision is effective today.

4.

### **APPENDIX**

# **Compensation Decision Summary Information**

<b>Compensation Decision:</b>		Modifies Decision?	No
<b>Contribution Decision:</b>	D1304012		
Proceeding:	I1204010		
Author:	ALJ Jean Vieth		
Payer:	Pacific Gas and Electric Company	<i>T</i>	

## **Intervenor Information**

Intervenor	Claim	Amount	Amount	Multiplier?	Reason	
	Date	Requested	Awarded		Change/Disallowance	
The Utility Reform	5/19/13	\$26,817.01	\$26,817.01	No	N/A	
Network						

### **Advocate Information**

First Name	Last Name	Type	Intervenor	Hourly Fee	Year Hourly Fee	Hourly
				Requested	Requested	Fee
						Adopte d
William	Nusbaum	Attorney	TURN	\$445	2012	\$445
William	Nusbaum	Attorney	TURN	\$455	2013	\$455
Tom	Long	Attorney	TURN	\$530	2012	\$530

(END OF APPENDIX)